SERVED: December 14, 1993

NTSB Order No. EA-4044

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of December, 1993

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. JOHN V. CONAHAN, III, Respondent.	Docket SE-13324

OPINION AND ORDER

The Administrator and respondent have both appealed from the oral initial decision issued by Administrative Law Judge William A. Pope, II, at the conclusion of a three-day hearing held in this case on November 18, 19, and 20, 1993.[1] In that decision, the law judge dismissed an emergency order revoking respondent's airline transport pilot (ATP) certificate based on allegations

[1] Attached is an excerpt from the hearing transcript containing the oral initial decision.

that he falsified his pilot logbook, and that he piloted certain flights under Part 135 when he was not qualified to do so.[2] The Administrator appeals from the law judge's dismissal of the charges, and argues that his case was prejudiced by the law judge's handling of a problem which arose on the second day of the hearing involving the availability of the Administrator's attorney. Respondent, although he prevailed at the hearing, has appealed from one of the law judge's credibility findings, and from the law judge's failure to dismiss the complaint as stale, and also argues that he was prejudiced by the conduct of the proceeding. As discussed below, the Administrator's appeal is denied, and respondent's appeal is granted in part (as to the credibility determination).

At issue in this case is 1) respondent's alleged intentional falsification of his pilot logbook (in violation of 14 C.F.R. 61.59(a)(2) and, indirectly, 61.51(a) and (c)(5)) and 2) his piloting of flights allegedly conducted under Part 135 when he had not received the required testing and flight competency checks required for such operations (in violation of 14 C.F.R. 135.293(a) and (b)).[3] Each group of alleged violations is discussed separately below.

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[2] The regulations respondent was charged with violating are reproduced in an Appendix to this opinion and order.

[3] The Administrator's complaint also contained an additional allegation that respondent piloted a flight under instrument flight rules when he had not had the required pilot flight time, in violation of 14 C.F.R. 135.243(c)(2). The Administrator has not appealed from the law judge's dismissal of that charge as unproven.

I. Intentional falsification of respondent's pilot logbook.

These allegations center around six entries in respondent's pilot logbook which indicate that, on flights made in April and June of 1990, respondent received dual flight instruction in a PA 31-350 "Navajo" dual-control aircraft. It is undisputed that respondent could properly credit dual instruction time, along with pilot in command time, towards the 1500 hours of flight time necessary to obtain his ATP certificate, but that he could not credit second in command time since the aircraft requires only one pilot. (Tr. Vol. 1, 118.) It is also undisputed that the entries at issue were part of a group of entries made by respondent's fiance, Kara Focht, some months after the actual flights took place, in an effort to assist respondent in managing his affairs during a difficult period in his life.

Ms. Focht, whose testimony the law judge credited "entirely" (I.D. 24-5),[4] explained that she had been helping respondent update his logbook (a task in which he often fell behind) by reading out loud the information contained in annotated airport records which respondent had brought home for this purpose and put into chronological order,[5] as respondent entered the

[4] "I.D." refers to the transcript of the law judge's oral initial decision.

[5] Presumably, these airport records were those of respondent's employer, Arner Flying Service, an operation providing, among other things, flight instruction, pilot services to aircraft owners (i.e., flights under 14 C.F.R. Part 91), and charter flying (i.e., flights under 14 C.F.R. Part 135). (Tr. Vol. 1, 264; Vol. 3, 126.) In addition, it appears that respondent did some personal flying in airplanes which were hangared at Arner Flying Service and were available for rentals.

information in the appropriate columns in his logbook. At some point during this joint project respondent was called away to take his mother to a medical appointment, and Ms. Focht took it upon herself to continue the updating by making the entries herself from the information on the airport records. Ms. Focht, who is not a pilot, testified that for the six entries here at issue[6] she entered the flight time in the "dual received" column simply because the airport records from which she was working listed two pilots for those flights. She did not realize at the time that the column was supposed to be used for recording dual instruction received. (Tr. Vol. 3, 96, 110.)

A few days later, when respondent noticed that Ms. Focht had made additional entries in his absence, he certified that the entries were true by signing the bottom of each logbook page filled out by Ms. Focht. He testified that he simply scanned the pages, but did not read them, before he signed the certification. (Tr. Vol. 3, 132, 166.) Indeed, he confessed that he would have deleted the offending entries if he had focused on them, because he did not feel at that time that he had received flight

(..continued)
(Tr. Vol. 3, 153, 180.)

[6] It appears from our examination of the logbook (Exhibit A-12), which shows a discernible difference between the handwritten entries made by Ms. Focht and those apparently made by respondent, that Ms. Focht made approximately 129 consecutive entries covering flights from March 25, 1990 to June 14, 1990 (all of which were certified by respondent's signature at the bottom of each logbook page). The Administrator, who conducted an exhaustive review and analysis of respondent's logbook during the investigatory phase of this proceeding, did not challenge the accuracy of any of the other entries made by Ms. Focht, or the propriety of her having made the entries in the first place.

instruction on those flights.[7] (Tr. Vol. 3, 133, 168.) In preparing to defend against this action, however, respondent apparently came to believe that the flights nonetheless qualified as legitimate instruction under 14 C.F.R. 61.169.[8] (Tr. Vol. 3, 133-4.) Accordingly, respondent took the position at the hearing that, not only did he have no actual knowledge of the allegedly false entries, but the entries were not false to begin with. Respondent does not contest the materiality of the entries.[9]

In his initial decision, the law judge first concluded that two of the flights at issue qualified as instruction under section 61.169, but that -- because there was no evidence that the pilots accompanying respondent on the other four flights held ATP certificates -- the other flights did not qualify, and were therefore falsely entered in respondent's logbook as "dual

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[7] Indeed, testimony and written statements from the other pilots aboard those flights corroborates respondent's feeling that flight instruction did not occur. (Tr. Vol. 1, 281; Exhibits A-23 and A-24.)

[8] 14 C.F.R. 61.169 provides:

§ 61.169 Instruction in air transportation service.

> An airline transport pilot may instruct other pilots in air transportation service in aircraft of the category, class, and type for which he is rated. However, he may not instruct for more than 8 hours in one day nor more than 36 hours in any 7-day period. He may instruct under this section only in aircraft with functioning dual controls. Unless he has a flight instructor certificate, an airline transport pilot may instruct only as provided in this section.

[9] The elements of intentional falsification are: 1) a false statement, 2) in reference to a material fact, 3) made with knowledge of its falsity. Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976).

received." (I.D. 32-3.) The law judge then found that respondent had actual knowledge of the falsity of those entries, and found him in violation of section 61.59 as to those four false entries. (I.D., 37-8.) However, after respondent's counsel called to his attention evidence in the record showing that all the "instructor" pilots did in fact hold ATP certificates (Exhibits A-14 and A-15), the law judge immediately reversed himself and found no falsity, and therefore no violation of section 61.59. (I.D., 49.) Thus, the law judge found that the entries were not false and the respondent had actual knowledge of them. We reach the opposite conclusions.

A. Falsity. In our judgment, respondent's after-the-fact reliance on section 61.169 (even assuming the "air transportation service" criteria of that section were met) cannot overcome the key fact that neither respondent nor the pilots he flew with on the six flights at issue believed at the time of the flight that true "instruction" was being given or received. Nonetheless, it appears that the limitation of that section to instruction "in air transportation service" (e.g., flights involving common carriage)[10] renders it inapplicable to this case, as it is undisputed that the flights on which the purported instruction occurred were all flights under Part 91.

[10] "Air transportation" is defined as "interstate, overseas, or foreign air transportation or the transportation of mail by aircraft." 14 C.F.R. 1.1. Interstate, overseas, and foreign air transportation are each defined as various forms of carriage by aircraft of persons or property "as a common carrier for compensation or hire." Id.

We have been unable to locate any helpful regulatory history or any other comprehensive guidance regarding the intended scope of section 61.169. However, we note that our view is consistent with expert testimony offered by the Administrator at the hearing[11] and other statements issued by the FAA,[12] as well as a previous comment made by the Board.[13] In any event, we need not

[11] The FAA's investigating inspector in this case testified that, although he did not consider section 61.169 in his investigation of this case, he was taught at the FAA's training academy that it applied only to instruction given by specially trained pilots working for Part 135 and Part 121 carriers. (Tr. Vol. 3, 27, 31-36, 42-3.) This is consistent with the regulatory schemes of Part 121 and Part 135, which establish carrier-run training programs. (See, in particular, sections 121.411, 121.413, 135.337, and 135.339, which clearly contemplate that pilots who are not CFIs will nonetheless carry out certain testing and training requirements under the carrier's program.) Although it is possible that Arner Flight Service, as the holder of a Part 135 operating certificate, might have had such a training program, no evidence was presented to show that the purported "instruction" was part of such a program.

[12] The FAA has responded to at least two separate written requests for interpretation of section 61.169. In one, the responding FAA official stated that that section authorizes an ATP "to give flight instruction which may be logged by the recipient for the purpose of obtaining an airline transport pilot certificate, only if the recipient is engaged in air transportation service." Volume 1, Federal Aviation Decisions, page 104, Interpretation 1976-9, dated March 5, 1976. In the second, the responding official stated, similarly, that the authorization of that section "only extends to instruction given to other pilots in [a]ir [t]ransportation [s]ervice." Id. at page 356, Interpretation 1976-23, dated May 15, 1979.

In addition, in a 1989 notice of proposed rulemaking dealing with proposed changes in general pilot training requirements, the FAA made passing reference to the fact that an "authorized instructor can be either the holder of a valid FAA flight instructor certificate issued under Part 61 or, in the case of an air carrier, a person with an ATP certificate who conforms to the procedures of § 61.169." 54 Fed. Reg. 22852 (May 26, 1989) (emphasis ours).

[13] In Administrator v. Schlagenhauf, NTSB Order No. EA-3611 at 7 (1992), we noted our assumption that the authority in

conclusively decide the issue (which relates only to the element of falsity in this case), as respondent's lack of actual knowledge (see discussion below) warrants dismissal of the falsification charges.

B. Actual knowledge. In finding that respondent was "not a credible witness on the point of his actual knowledge" (I.D., 37), the law judge offered the following rationale:

> His log book contains similar entries which he made claiming dual received time under similar circumstances. I do not credit his statement that each and every one of those other instances involved instruction by Byron Arner, a certified flight instructor, absent some showing to support such a blanket assertion.
>
> Further, while Ms. Focht may have filled out the log entries which are the subject of Paragraph 3 [of the complaint], she did so from records prepared and annotated by the [r]espondent. Clearly, the entries she made were in line with similar entries made by the [r]espondent on other occasions.
>
> Also not to be ignored is the [r]espondent's responsibility to make sure the entries in his log book are correct before he certifies them. Here, [r]espondent should have known that the entries were there and cannot escape responsibility by claiming that he did not bother to read them before signing the certification.

Upon careful consideration of the entire record in this case, we have concluded that respondent's testimony (that he did not know of the false entries) cannot be rejected based on the rationale given by the law judge, as that rationale is inconsistent with the evidence and with his own credibility findings, and includes an improper standard for evaluating the

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section 61.169 to instruct in "air transportation service" was limited to training in commercial operations for an air carrier.

issue of actual knowledge.[14] Our evaluation of the record convinces us that the law judge's rationale is insufficient to support a finding that respondent was actually aware of the falsity of the six entries here at issue when he signed the certifications. Accordingly, the law judge's credibility finding on that point is reversed.

The law judge's apparent belief that respondent had a pattern or practice -- which predated the entries here at issue -- of claiming credit for undeserved "dual received" time is unsupported in this record. When asked about the numerous other "dual received" entries in his logbook, respondent explained that they all involved instruction given by Byron Arner who, as a certified flight instructor, was clearly authorized to provide and endorse such instruction. (Tr. Vol. 3, 189-92.) Respondent then directed the law judge to Mr. Arner's blanket endorsement in the back of his logbook: "2-1-91 All PA 31 time logged certified as accurate from 4-27-89 to 8-23-90 /s/ B.J. Arner CFIIMEL 1218202." (Exhibit A-12.)

Both respondent and his counsel represented, and the Administrator did not deny, that the FAA had examined Mr. Arner's blanket endorsement and -- despite its obvious inapplicability to the six entries made by Ms. Focht involving other pilots with respondent in the PA 31 (the dual-control aircraft used on all of

[14] See Administrator v. Chirino, 5 NTSB 1661 (1987), aff'd., 849 F.2d 1525 (D.C.Cir. 1988) (law judge's credibility finding was invalidated because it was based on a critical mistake as to the evidence).

the flights in which dual instruction was logged) -- found it to be acceptable. (Tr. Vol. 3, 194.) Indeed, the Administrator's counsel stated at the start of the hearing that these "dual received" entries in respondent's logbook were not included in the falsification charges because the Administrator did not have proof that they were false. (Tr. Vol. 1, 156.) In our judgment, it was inappropriate for the law judge to base his adverse credibility determination on an implicit finding that respondent was guilty of other uncharged and unproven intentional falsifications.

We note that it was respondent's consistent habit to leave the "remarks and endorsements" column blank when logging dual time in the PA 31-350 (apparently intending to rely on Mr. Arner's blanket endorsement in the back of his logbook). (Exhibit A-12.) Thus, if respondent were engaged in a scheme to claim undeserved credit for dual instruction flight hours, his plan would not be advanced by including in his logbook entries (such as those made by Ms. Focht) which on their face identify someone other than Mr. Arner (and non CFIs at that) as the purported "instructor." Such entries would be suspicious on their face. Thus, the existence of the numerous other "dual received" entries, rather than tending to show that respondent had actual knowledge of the false entries in this case, actually enhances the credibility of respondent's testimony that he had no actual knowledge of the false entries.[15]

[15] It is possible that the law judge's suspicions about the

The law judge also seems to suggest, in pointing out that Ms. Focht made the entries from records prepared and annotated by respondent, that respondent had already labeled the hours as "dual received" in those records. However, such a conclusion is inconsistent with the law judge's acceptance of Ms. Focht's testimony (in which she explained that she entered the time as "dual received" simply because she saw two pilots listed) as "entirely credible" (I.D., 23, 25).

Finally, the law judge states that respondent is responsible for ensuring the accuracy of his logbook entries and cannot avoid that responsibility by claiming he did not read the entries, and concludes that respondent "should have known" about these entries. However, we have held that in falsification cases such as this it is not enough to show that a respondent "should have known."[16] Proof of actual knowledge is required. In sum, we

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other "dual received" entries arose from the fact that all of the PA 31 time listed in respondent's logbook (except the entries made by Ms. Focht) was, according to the blanket endorsement, with Mr. Arner. Yet, as evidenced by Ms. Focht's entries, during April and June of 1990 respondent apparently made six flights in that aircraft with other pilots. This seemingly curious circumstance might lead one to suspect that some of the earlier flights were also made with other pilots, contrary to the blanket endorsement. However, this assumes that when making his own logbook entries respondent always logged all of the PA 31 flights reflected in airport records, as Ms. Focht apparently did here, rather than logging only those flights on which the "dual received" time was properly creditable as such (i.e., those flights with Mr. Arner). Since respondent was not asked about his habits in this respect, his demeanor and credibility on that point could not properly be evaluated by the law judge. Thus, the law judge's speculation on that point is not a proper basis for a credibility finding.

[16] Administrator v. Juliao, NTSB Order No. EA-EA-3087 (1990); Administrator v. Cone, NTSB Order No. EA-3948 (1993).

affirm the law judge's dismissal of the section 61.59(a)(2) charges (albeit on other grounds).

As for the alleged violations of sections 61.51(a) (failure to maintain a reliable record of training and experience) and 61.51(c)(5) (failure to have time logged as flight instruction appropriately certified by the instructor), the law judge appeared to acknowledge that the entries, on their face, did not comply with these requirements. (I.D., 29.) However, in dismissing the Administrator's complaint in its entirety, he implicitly found no violation of these sections.

We think this internal inconsistency would, under ordinary circumstances, warrant a remand for further explanation. See 49 C.F.R. 821.42(b) (requiring a statement of findings and conclusions as to, among other things, material issues of fact and law). We are, however, constrained by the short time frames imposed in emergency proceedings. Consequently, we will resolve these issues in a manner we believe is most consistent with the procedural arrangements agreed to by the parties.[17]

The parties agreed to a process in which the law judge would hear the entirety of the case, rule as to whether a lack of qualification had been shown, and, if not, make a determination of whether the remaining violations were stale. As discussed

[17] It appears that the parties agreed to a procedure facially inconsistent with the process outlined in 49 C.F.R. 821.33, but there is no showing that their decisions were uninformed or violated the norms of administrative practice. Hence, for this case, we will accept their formulations. (Tr. Vol. 1, 87, 101-2.)

above, a lack of qualification has not been found; hence, whether the violations of sections 61.51 (a) and 61.51(c)(5) are stale ought to have been addressed. Evidence and argument in the record indicates that these charges would not have survived a stale complaint challenge, and in the public interest, argue against a remand limited to this issue.[18] Accordingly, we affirm the law judge's dismissal of these charges.

II. Flights improperly conducted under Part 135.

The Administrator alleged in his complaint that five flights respondent piloted in a PA 31-350 "Navajo," and twelve flights he piloted in a PA 32-301 "Saratoga," were conducted under Part 135 of the Federal Aviation Regulations when he did not meet the pilot testing requirements of that Part. It is undisputed that respondent piloted the flights, and that he was not qualified at the time to make Part 135 flights in those aircraft. Respondent

[18] The Administrator asserted that his delayed discovery of all of the alleged violations in this case justified his prosecution of charges which might otherwise have been stale. But the FAA's investigating inspector acknowledged that, although he became involved in investigating these potential violations in December of 1992, he did not request respondent's logbook until April of 1993, and did not forward the case to the FAA's legal office until some four months after that. The emergency order was issued on October 1, 1993, more than five months after the FAA began its review of respondent's logbook (the chief source of all of the Administrator's charges in this case). (Tr. Vol. 1, 141-50; Vol. 2, 109-112.) No explanation was offered for these substantial delays. Thus, it appears that this case was not accorded the required expedited handling after the delayed discovery to exempt it from the limitations of the stale complaint rule. See Administrator v. Holland, NTSB Order No. EA-3987 (1993) (when violations are belatedly discovered, Administrator must show that entire processing of the case was expedited so as to minimize any further delay to avoid dismissal under stale complaint rule).

maintained, however, that the subject flights in the Navajo were for either his own personal business or the personal business of one of his co-owners, and were therefore conducted under Part 91, not Part 135.[19] Respondent further contended that he reasonably believed the subject flights in the Saratoga were conducted under Part 91, because his employer told him that the corporate client-passenger on those flights owned the aircraft. The law judge found in respondent's favor on both counts and dismissed the charged violations. We affirm.

A. Flights in the Navajo. The Administrator does not appear to dispute that respondent was a part-owner of the Navajo at the time of the flights in issue. The Administrator's position that the flights were impermissible Part 135 flights was based simply on the fact that the aircraft was listed on Arner Flying Service's Part 135 certificate at the time,[20] and on respondent's own notations in his logbook as to these flights,[21] particularly respondent's use of the word "charter" in one of the entries. The Administrator presented no proof that respondent received any compensation for these flights, nor did he offer any

[19] These flights involved the same aircraft in which respondent logged his "dual received" instruction time, discussed above, but took place more than one year later. By the time of these later flights, respondent had become a part-owner of the aircraft, and had obtained his ATP certificate and a multi-engine rating.

[20] From this fact it certainly does not follow that every flight made in the aircraft was one under Part 135.

[21] Those notations read: "Navajo charter," "Moyar Navajo trip," "Romano trip, W.V. (Navajo)," "Romano trip W.V. (pickup Navajo)," and "J. Bennett, personnel to ACY." (Exhibit A-12; Tr.

evidence of who the passengers were or what the purposes of the flights were.

Respondent, in testimony credited by the law judge, explained with regard to each trip what its purpose was and why he entered the notations he did. He stated that he sometimes used the word "charter" in the "remarks" column to remind himself when non-personal trips in the Navajo (or in the Saratoga, which he sometimes rented for his own use) were not for his own personal business, but rather for someone else's -- in these cases for one of the co-owners of the aircraft. (Tr. Vol. 3, 151, 153.) He explained that he adopted this practice because he had been erroneously billed for non-personal flights in the past.

The law judge credited respondent's testimony as to these entries, and we see no reason to overturn that credibility determination. In sum, we agree with the law judge that the Administrator presented insufficient proof that these flights were conducted under Part 135.

B. Flights in the Saratoga. The Administrator's position regarding these flights was again based on respondent's notations in his pilot logbook,[22] and upon evidence that ACI (the corporation for whom respondent concedes most of the flights were conducted) did not own the Saratoga aircraft used on those

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Vol. 1, 323-4.)

[22] Specifically, respondent wrote "charter 79Z," "Verbitsky charter," and (on 10 entries) "ACI." ACI refers to Asbestos Control Incorporated, a corporation for whom Arner Flying Service primarily provided piloting and other aviation services connected with its PA 31-350.

flights. (Exhibit A-28.) Respondent testified, however, that when he asked his employer, Byron Arner, Mr. Arner told him that ACI owned the aircraft and that these flights, like those in the PA 31-350 (which ACI did own at the time), were Part 91 flights. (Tr. Vol. 3, 137, 139-40.) Respondent stated that he did not know until the hearing in this case that the aircraft was owned by someone else. (Tr. Vol. 3, 141.) He stated that, as a pilot for Arner Flying Service, he had no access to aircraft ownership records or billing records. (Tr. Vol. 3, 141.)

The law judge credited respondent's testimony that he relied on his employer's representation that ACI owned the aircraft, and found that the Administrator failed to prove that respondent knew or should have known that the flights were conducted under Part 135.[23] We see no reason to overturn that credibility determination, and we therefore affirm the law judge's dismissal of these charges.[24] See Administrator v. Fulop, NTSB Order No.

[23] We have declined to hold pilots responsible for Part 135 violations when they neither knew nor should have known that the flights they operated were governed by Part 135. Administrator v. Garnto, 3 NTSB 4119 (1981); Administrator v. Fulop, NTSB Order No. EA-2730 (1988). See also, Administrator v. Mardirosian, NTSB Order No. EA-3216 (1990); Administrator v. Hagerty, NTSB Order No. EA-3549 (1992); Administrator v. Brown, NTSB Order No. EA-3698 (1992), where we continued to recognize that the relevant question in such cases is whether respondent knew or should have known that the flights were actually Part 135 flights.

[24] Although two of the 12 entries in respondent's logbook did not explicitly identify ACI as the customer, but rather described the flights simply as "charters," we agree with the law judge that respondent's use of this word, standing alone, does not establish that the flights were in fact governed by Part 135. The law judge again credited respondent's explanation of his use of the word "charter" (i.e., that it was his personal way of remembering that the flight was not one for which he should be

EA-2730 (1988) (Part 135 violations dismissed where pilot had been assured by his employer that the cargo he was carrying was owned by the employer company, and flights were therefore governed by Part 91, not Part 135).

One final issue remains to be addressed. The Administrator argues in his brief that the law judge's failure to grant a continuance when the Administrator's counsel was required to leave during the second day of the three-day hearing prejudiced the Administrator's case to such an extent that (in the event the Administrator's appeal is not granted) the case should be remanded to the point at which the Administrator's counsel was required to leave. (Administrator's Appeal Brief, at 36-9.) We disagree.

It is clear to us that the circumstances which caused the Administrator's counsel to have to leave in the midst of the hearing were foreseeable and should have been planned for. Indeed, the law judge had apparently cautioned the Administrator's counsel several days earlier, when counsel informed him that he would have to leave by 4:00 Friday afternoon to attend a religious observance, that the case might not be concluded by then. Accordingly, the law judge is not to blame for any prejudicial effect that that departure might have had on the Administrator's case. Moreover, we agree with the law judge

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billed for personal rental of the aircraft), and we see no reason to overturn that credibility determination.

that, in light of the emergency nature of this proceeding and the law judge's tight schedule, a continuance was not appropriate.[25]

Furthermore, we perceive no prejudice to the Administrator resulting from the law judge's denial of a continuance which would warrant a remand in this case. The Administrator has not identified anything that would have been done differently had original counsel, rather than replacement counsel, handled the second half of the hearing. We note also that the law judge allowed the Administrator two hours to brief his replacement counsel (who was apparently called in at the last minute when the law judge denied a continuance) on the progress of the case. (Tr. Vol. 2, 149.)

[25] This three-day hearing (held in Allentown, Pennsylvania) ended at 11:30 p.m. on Saturday, November 20, 1993. The law judge was apparently scheduled to hear two other emergency cases in Miami, Florida, beginning on Monday, November 22. (Tr. Vol. 2, 144.)

We note that the law judge apparently honored the Administrator's earlier request to delay scheduling of the hearing until after November 16, so as to accommodate the vacation plans of his chief witness.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied;

2. The initial decision is affirmed, except as modified herein; and

3. The emergency order of revocation is reversed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

APPENDIX

§ 61.51 Pilot logbooks.

(a) The aeronautical training and experience used to meet the requirements for a certificate or rating, or the recent flight experience requirements of this part must be shown by a reliable record. The logging of other flight time is not required.

* * *

(c) Logging of pilot time–

* * *

(5) *Instruction time.* All time logged as flight instruction, instrument flight instruction, pilot ground trainer instruction, or ground instruction time must be certified by the appropriately rated and certificated instructor from whom it was received.

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

(a) No person may make or cause to be made–

* * *

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for the issuance, or exercise of the privileges, or any certificate or rating under this part;

§ 135.243 Pilot in command qualifications.

*** * ***

(c) Except as provided in paragraph (a) of this section, no certificate holder may use a person, nor may any person serve, as pilot in command of an aircraft under IFR unless that person–

* * *

(2) Has had at least 1,200 hours of flight time as a pilot, including 500 hours of cross country flight time, 100 hours of night flight time, and 75 hours of actual or simulated instrument time at least 50 hours of which were in actual flight; and

§ 135.293 Initial and recurrent pilot testing requirements.

(a) No certificate holder may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12th calendar month before that service, that pilot has passed a written or oral test, given by the Administrator or an authorized check pilot, on that pilot's knowledge in the following areas—

(1) The appropriate provisions of parts 61, 91, and 135 of this chapter and the operations specifications and the manual of the certificate holder;

(2) For each type of aircraft to be flown by the pilot, the aircraft powerplant, major components and systems, major appliances, performance and operating limitations, standard and emergency operating procedures, and the contents of the approved Aircraft Flight Manual or equivalent, as applicable;

(3) For each type of aircraft to be flown by the pilot, the method of determining compliance with weight and balance limitations for takeoff, landing and en route operations;

(4) Navigation and use of air navigation aids appropriate to the operation or pilot authorization, including, when applicable, instrument approach facilities and procedures;

(5) Air traffic control procedures, including IFR procedures when applicable;

(6) Meteorology in general, including the principles of frontal systems, icing, fog, thunderstorms, and windshear, and, if appropriate for the operation of the certificate holder, high altitude weather;

(7) Procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft pilots are not required to be tested on escaping from low-altitude windshear); and

(iii) Operating in or near thunderstorms (including best penetrating altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions; and

(8) New equipment, procedures, or techniques, as appropriate.

(b) No certificate holder may use a pilot, nor may any person serve as a pilot, in any aircraft unless, since the beginning of the 12th calendar month before that service, that pilot has passed a competency' check given by the Administrator or an authorized check pilot in that class of aircraft, if single-engine airplane other than turbojet, or that type of aircraft, if helicopter, multiengined airplane, or turbojet airplane, to determine the pilot's competence in practical skills and techniques in that aircraft or class of aircraft. The extent of the competency check shall be determined by the Administrator or authorized check pilot conducting the competency check. The competency check may include any of the maneuvers and procedures currently required for the original issuance of the particular pilot certificate required for the operations authorized and appropriate to the category, class and type of aircraft involved. For the purposes of this paragraph, type, as to an airplane, means any one of a group of airplanes determined by the Administrator to have a similar means of propulsion, the same manufacturer, and no significantly different handling or flight characteristics. For the purposes of this paragraph, type, as to a helicopter, means a basic make and model.